

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

**GRAPHIC COMMUNICATIONS
CONFERENCE/INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
LOCAL 735-S,**

Respondent

Case No. 04-CB-215127

and

BEMIS COMPANY, INC.,

Charging Party.

CHARGING PARTY BEMIS COMPANY, INC.'S POST-HEARING BRIEF

Dated: December 3, 2018.

Timothy C. Kamin, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Pabst Boiler House
1243 North 10th Street, Suite 200
Milwaukee, WI 53205-2559
Telephone: 414-239-6400
Facsimile: 414-755-8289
Timothy.kamin@ogletree.com

**ATTORNEYS FOR CHARGING PARTY
BEMIS COMPANY, INC.**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	1
	A. Bemis And The Union	1
	B. Bemis’s Discharge Of The Union’s President	1
III.	DISCUSSION	3
	A. Mr. Stasko And Mr. Samsel Engaged In Protected, Concerted Activity.....	3
	B. The Union Threatened And Coerced Employees In Violation Of Section 8(a)(1)(A) Of The Act.....	5
	1. The Union Threatened Mr. Stasko On December 18, 2017	6
	2. The Union’s Posting Of “The Communicator” Threatened And Coerced Employees.....	7
	3. The Union Threatened Mr. Samsel In January 2018	9
	C. The Union Attempted To Cause Bemis To Discriminate Against Mr. Stasko In Violation Of Section 8(b)(2).....	10
	1. The Union Reported Mr. Stasko For A Purported Safety Violation In Mid-January 2018.	11
	2. The Union Reported Mr. Stasko For A Purported Safety Infraction On January 25 and 26, 2018	14
IV.	CONCLUSION.....	17

TABLE OF CASES

<i>Development Consultants</i> , 300 NLRB 479, 483 (1990)	10
<i>Ellison Media Co.</i> , 344 NLRB 1112, 1113 (2005)	4
<i>Fresh & Easy Neighborhood Market</i> , 361 NLRB 151 (2014)	3, 4
<i>Meyers Industries</i> , 268 NLRB 493, 497 (1984) (Meyers I)	4
<i>NLRB v. City Disposal Systems</i> , 465 U.S. 822, 831 (1984)	4
<i>Prill v. NLRB</i> , 755 F.2d 941 (D.C. Cir. 1985)	4
<i>Shipbuilders Local 9 (Todd Pacific Shipyards)</i> , 279 NLRB 617 (1986)	10
<i>Summit Regional Medical Center</i> , 357 NLRB No. 134 (2011)	4
<i>Teamsters Local 391</i> , 357 NLRB 2330 (2012)	6, 7, 10
<i>Teamsters Local 896 (Anheuser-Busch, Inc.)</i> 339 NLRB 769 (2003)	6, 7, 9

TABLE OF AUTHORITIES

29 U.S.C. § 157 (Section 7, NLRA)	3
29 U.S.C. § 158(b)(1)(A) (Section 8(b)(1)(A), NLRA)	5
29 U.S.C. § 158(b)(2) (Section 8(b)(2) NLRA)	10

I. INTRODUCTION

This case is about the Charged Party Local 735-S of the GCC/IBT's ("Union") pattern of threats, harassment and intimidation against employee-members who dared to share their workplace concerns with management of the Charging Party Bemis Company, Inc. ("Bemis" or "Company") management regarding workplace harassment on the part of the Union's President. When the Union President was suspended and ultimately discharged for his misconduct, the Union's officers and agents promptly retaliated by engaging in threats, both verbal and written, against the employees who voiced their concerns to management. The Union's officers and agents also began to report alleged misconduct to management in an effort to cause Bemis to issue disciplinary action against the employees who engaged in the protected complaints.

II. FACTUAL BACKGROUND

A. Bemis And The Union.

Bemis operates a production facility in Hazelton, Pennsylvania, at which Bemis manufactures bread bags. (Tr. 25-26.) At the Hazelton facility, the Union represents a bargaining unit of production, maintenance and logistics employees. (Tr. 26.) That bargaining unit includes approximately 350 employees. (Tr. 26.) The Union already represented employees at the facility when Bemis acquired the Hazelton facility in 1993, and Bemis and the Union have had an ongoing bargaining relationship since that time. (Tr. 26.) Bemis and the Union currently have a collective bargaining agreement that is in effect through 2020. (Tr. 27, G.C. Exh. 3.)

B. Bemis's Discharge Of The Union's President.

The President of the Union is Dominic DeSpirito. (Tr. 27.) After approximately 30 years of employment at Bemis' Hazelton facility, Mr. DeSpirito was discharged from employment on January 18, 2018. (Tr. 28-29.) On December 14, 2017, employees complained to Bemis

management that Mr. DeSpirito was engaging in sexually lewd harassment of an employee named Joe Stasko. (Tr. 31-32.) On December 14, 2017, Bemis placed Mr. DeSpirito on suspension pending investigation of this misconduct. (Tr. 32.) On January 18, 2018, after the investigation was complete, Bemis discharged Mr. DeSpirito. (Tr. 28.)

This investigation began on December 14, 2017, when an employee named Jimmy Kassak brought a complaint to Bemis management. (Tr. 31-32.) Mr. Kassak reported that Mr. DeSpirito was harassing Mr. Stasko, a press room employee and member of the Union. (Tr. 31-32.) After Mr. Kassak initially brought the complaint forward to management, Mr. Stasko and another employee, Mike Samsel, also shared their experiences and concerns with the Company about Mr. DeSpirito's misconduct. (Tr. 31-32.)

Mr. Stasko shared with Bemis the facts that Mr. DeSpirito, the Union President, had made lewd comments to him and had made sexual gestures with his hands simulating oral sex. (Tr. 68.) Mr. DeSpirito would say things like Mr. Stasko "sucks cock," that Mr. Stasko "sucks a bunch of cock," and that Mr. Stasko specifically sucked the cocks of various managers and others working at Bemis. (Tr. 68.) Mr. DeSpirito's harassment of Mr. Stasko began in September 2017, and continued until mid-December 2017, when it was reported to Bemis. (Tr. 68.) Mr. Samsel, a press assistant and member of the Union, also cooperated in the Company's investigation of Mr. DeSpirito's harassing conduct toward Joe Stasko. (Tr. 159-160.) Mr. Samsel provided a statement to Bemis management regarding his observations of Mr. DeSpirito's misconduct. (Tr. 160.)

Immediately after Mr. DeSpirito's suspension, Mr. DeSpirito expressly announced the Union's intent to retaliate against those who reported his misconduct. At the time Mr. DeSpirito was suspended, Mr. Samsel received a phone call from Mr. DeSpirito. (Tr. 162.) Mr. DeSpirito asked Mr. Samsel what was going on at the plant, and Mr. Samsel responded that employees were

being interviewed about Mr. DeSpirito's misconduct. (Tr. 163.) Mr. Samsel told Mr. DeSpirito that he was not going to lie for him. (Tr. 163.) Mr. DeSpirito said to Mr. Samsel that "nobody is safe, "they better watch their back," and that he "wasn't going to do anything" for those people who had made reports of his misconduct. (Tr. 163.)

Immediately after Bemis suspended and discharged Mr. DeSpirito, the Union and its officers and agents began a pattern of harassment, including complaints, against and about, the employees who shared with Bemis their concerns about Mr. DeSpirito's misconduct. Lynn Andrews, the Union's Secretary-Treasurer, and member of the Union's Executive Board, carried out Mr. DeSpirito's instructions to confront the employees who shared their concerns with Bemis management. (Tr. 215.) Ironically, Ms. Andrews testified that the Union has a policy against employees turning in other employees for alleged misconduct, and that the Union frowns upon employees reporting to management about other employees' misconduct. (Tr. 97.) However, Ms. Andrews made an exception to this policy in order to retaliate, and she began to report misconduct on the part of those who had provided statements against Mr. DeSpirito.

III. DISCUSSION

A. Mr. Stasko And Mr. Samsel Engaged In Protected, Concerted Activity.

Mr. Stasko and Mr. Samsel engaged in activities protected by Section 7 of the Act when they shared their complaints about Mr. DeSpirito's misconduct with Bemis's management. Section 7 of the Act protects the right of employees to engage in concerted activity for the purpose of "mutual aid or protection." 29 U.S.C. § 157.

The Board has held that employees engage activity protected by Section 7 of the Act when they present to their employer their shared concerns about workplace harassment. *See, e.g. Fresh & Easy Neighborhood Market*, 361 NLRB 151 (2014) (employees providing statements to their

employer regarding a workplace harassment complaint was protected conduct); *Ellison Media Co.*, 344 NLRB 1112, 1113 (2005) (multiple employees involved in bringing concerns about sexually harassing comments were protected activity). As discussed in detail by the Board in *Fresh & Easy Neighborhood Market*:

To be protected under Section 7 of the Act, employee conduct must be both “concerted” and engaged in for the purpose of “mutual aid or protection.” Although these elements are closely related, our precedent makes clear that they are analytically distinct. *See Summit Regional Medical Center*, 357 NLRB No. 134, slip op. at 3 (2011). ...[W]hether an employee's activity is “concerted” depends on the manner in which the employee's actions may be linked to those of his coworkers. *See NLRB v. City Disposal Systems*, 465 U.S. 822, 831 (1984); *Meyers Industries*, 268 NLRB 493, 497 (1984) (*Meyers I*), remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), supplemented *Meyers Industries*, 281 NLRB 882, 887 (1986) (*Meyers II*), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). The Supreme Court has observed, however, that “[t]here is no indication that Congress intended to limit [Section 7] protection to situations in which an employee's activity and that of his fellow employees combine with one another in any particular way.” *NLRB v. City Disposal Systems*, 465 U.S. at 835. The concept of “mutual aid or protection” focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to “improve terms and conditions of employment or otherwise improve their lot as employees.” *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978).

Id., 361 NLRB at 153. Thus, where the activity of coworkers, whether directly and intentionally coordinated or not, has the mutual purpose of addressing a common workplace concern, that activity is protected by the Act.

In this case, the employees at issue were engaged in protected, concerted activity. Initially, employee Jimmy Kassak was the first to bring a complaint to Bemis management about Mr. DeSpirito’s conduct toward Mr. Stasko, and that complaint was not just on his own behalf but also expressed concern for Mr. Stasko’s circumstance. (Tr. 31-32.) Bemis Company investigated by talking to other employees who may have knowledge of the harassment alleged by Mr. Kassak.

Both Mr. Stasko and Mr. Samsel cooperated in the Company's investigation and chose to provide statements to the Company regarding Mr. DeSpirito's misconduct.

Mr. Kassak and Mr. Samsel provided their statements in mutual aid of their coworker, Mr. Stasko, who had been the subject of Mr. DeSpirito's abuse and harassment. Mr. Kassak and Mr. Samsel themselves were troubled by Mr. DeSpirito's misconduct, even though it was directed at Mr. Stasko. Mr. Stasko also joined their effort to have Bemis address the negative working conditions created by Mr. DeSpirito's conduct by providing his own statement regarding Mr. DeSpirito's abusive and harassing conduct. When he agreed to provide a statement, Mr. Stasko knew that another employee had already reported Mr. DeSpirito's harassment, and knew that other employees had already provided statements about it. (Tr. 72.) Likewise, when Mr. Samsel agreed to provide a statement about Mr. DeSpirito, he was already well aware that other employees had reported this misconduct to Bemis. (Tr. 161.) These employees knew very well that they were not acting alone, and knew that their reports were addressing an issue that concerned not just themselves as individuals. Rather, they knew that they were contributing to a broader effort, engaged in by multiple employees, to address concerns shared by multiple employees. This is the very essence of activity protected by Section 7 of the Act. As set forth below, the Union engaged in repeated threats and efforts to get Mr. Stasko disciplined in retaliation for these protected, concerted activities.

B. The Union Threatened And Coerced Employees In Violation Of Section 8(a)(1)(A) Of The Act.

A union, acting through its agents, violates Section 8(b)(1)(A) of the Act when it engages in acts that "restrain or coerce...employees in the exercise of the rights guaranteed" in Section 7 of the Act. 29 U.S.C. § 158(b)(1)(A). The Board has held that a union making threats of internal union discipline against employees to discourage them from reporting their concerns about

coworker misconduct to their employer is a violation of Section 8(b)(1)(A). *See Teamsters Local 896 (Anheuser-Busch, Inc.)* 339 NLRB 769 (2003). Threatening or coercive statements in response to an employee's protected activity also violates the Act. *See, e.g., Teamsters Local 391*, 357 NLRB 2330 (2012) (union agent's statement about an employee who engaged in protected act that "the fucking scab needs to be stopped" was an unlawful threat in violation of Section 8(b)(1)(A), even in the absence of an "express" threat against the employee). The Union's violations of Section 8(b)(1)(A) were established by ample evidence at hearing.

1. The Union Threatened Mr. Stasko On December 18, 2017.

A couple of days after Mr. Stasko was interviewed by the Company, and shortly after Mr. DeSpirito was suspended for his misconduct, Lynn Andrews, the Union's Secretary-Treasurer confronted and threatened Mr. Stasko. Ms. Andrews admitted that she went to the press breakroom to confront Mr. Stasko because Mr. DeSpirito had told her that she needed to "go and see these people." (Tr. 215.) Ms. Andrews stated that she did not know who Mr. Stasko was, so she went to the press department and asked another employee who Mr. Stasko was. (Tr. 215.) Another employee directed her to Mr. Stasko, so she went to him and confronted him. (Tr. 216.)

Mr. Stasko testified that he was in the press department breakroom on a break. (Tr. 73.) Ms. Andrews came in the door of the breakroom and stood over Mr. Stasko, who was seated, wagged her finger in his face about 12 inches from his nose, and yelled at him. (Tr. 73-74.) Ms. Andrews said to Mr. Stasko that she was going to "get to the bottom" of what was going on. (Tr. 74.) Ms. Andrews asked Mr. Stasko, "how could you do this" to Mr. DeSpirito. (Tr. 74.) Ms. Andrews stated she was going to conduct her own investigation of the situation. (Tr. 74.) Ms. Andrews was upset, and was yelling loudly as she said these things to Mr. Stasko. (Tr. 75.)

Mr. Samsel was also present when Ms. Andrews came into the breakroom that day. (Tr. 165.) Mr. Samsel corroborated Mr. Stasko's testimony, and stated that Ms. Andrews got in Mr. Stasko's face, asking how could you do this to Dominic, and that the Union was going to do their own investigation and get to the bottom of what was going on. (Tr. 165.) Mr. Samsel corroborated that Ms. Andrews was leaning over Mr. Stasko and pointing her finger in his face very aggressively. (Tr. 165.) Both Mr. Stasko and Mr. Samsel testified that Ms. Andrews and other bag operators typically are never seen in the press department breakroom. (Tr. 76, 166.)

Ms. Andrews' conduct had the purpose and effect of communicating to Mr. Stasko, and to Mr. Samsel whom was present, that the Union was angry about their protected activities and that they would suffer some unspecified, adverse consequences as the result of the Union's "investigation" and hostility toward their protected activities. Such threatening and coercive implied threats violate the Act. *See Teamsters Local 391*, 357 NLRB at 2330-2331.

2. The Union's Posting Of "The Communicator" Threatened And Coerced Employees.

In a case very similar to this case, the Board has held that a union violated Section 8(b)(1)(A) when it posted notices to employee-members warning them that they could be subjected to union discipline if they complain to management about a fellow employee-member. *See Teamsters Local 896 (Anheuser-Busch, Inc.)*, 339 NLRB at 769-770 (the notices included the statements: "Remember: Going to management about a fellow Union member could leave you open to internal charges," and "follow this direction to avoid any possibility of internal union charges.")). In so finding, the Board stated that the postings violated the Act because "the threatened discipline tends to restrain or coerce members from exercising their Section 7 rights to complain concertedly to management..." *Id.* at 769.

In this case, the Union posted a notice to employee-members that contained similar, but even more direct admonitions to refrain from such protected activities. On January 22, 2018 – just days after Mr. DeSpirito was discharged – the Union posted in Bemis’s plant a Union-produced document called “The Communicator.” (Tr. 9, G.C. Exh. 2.) The Union posted “The Communicator” on the Union’s bulletin board and on the door to the employee breakroom. (Tr. 9.) This particular edition of “The Communicator” provided the following warning from the Union to Bemis’s employees:

ATTENTION

The events that have happened are very troubling. We as Union Brothers and Sisters do not turn each other in if we have an issues [sic] we go to a steward or a board member. Turning in fellow Union members is a violation of the Union by laws and could result in fines and black listed from all union jobs.

* * *

**Thank you
Dominic DeSpirito
President GCC/IBT Local 735-s**

(G.C. Exh. 2.) This posting constitutes a brazen and clear threat against any employee who engages in the Section 7 protected activity of concertedly complaining to management about concerns created by the misconduct of a coworker, such as the harassing misconduct of a fellow employee. The threat includes both direct financial harm in the form of fines, as well as loss of employment due to being “black listed from all union jobs.” Further, the threat here is specifically in response to actual protected activity by the employees who engaged in protected complaints regarding Mr. DeSpirito’s conduct. This is clear because Mr. DeSpirito was named as the author of the communication published on January 22, 2018, just four days after Mr. DeSpirito’s discharge, and it specifically referred to “the events that have happened” as “very troubling.” (G.C. Exh. 2.)

This posting, under directly applicable Board precedent, is an indisputable violation of Section 8(a)(1)(A). *See Teamsters Local 896 (Anheuser-Busch, Inc.)*, supra.

3. The Union Threatened Mr. Samsel In January 2018.

In late January 2018, Kevin Davidovich, the Union's Vice President, threatened Mike Samsel. This conversation took place near Press 23 where Mr. Samsel works. (Tr. 167.) Mr. Davidovich asked Mr. Samsel if Ms. Pienkowski, the HR Manager, had been out on the floor "shaking hands and congratulating people" about Mr. DeSpirito being fired. (Tr. 167-168.) Mr. Samsel told Mr. Davidovich that this had not happened. (Tr. 168.) Mr. Samsel then asked Mr. Davidovich about threatening notes and objects that Mr. Samsel believed had been left in his working area, such as homemade paper rats, which Mr. Samsel believed were targeting him for reporting Mr. DeSpirito's misconduct. (Tr. 168.) Mr. Davidovich replied to Mr. Samsel, "things could get much worse." (Tr. 168.) Mr. Samsel asked Mr. Davidovich what he meant by that, and Mr. Davidovich said "things could be settled like in the old days," including "caving in skulls," "smashing lockers," and damaging property and cars. (Tr. 168.) Mr. Samsel responded to Mr. Davidovich that the Vice President of the Union should not be making threats like that. (Tr. 168.) Mr. Davidovich responded that it was going to get worse, because Mr. DeSpirito had told Mr. Davidovich to "go after the rats." (Tr. 168.)

In his testimony, Mr. Davidovich admitted that he had a conversation with Mr. Samsel in which he referenced past events where toolboxes were vandalized, lockers were caved in and cars had been scratched with keys. (Tr. 204.) However, Mr. Davidovich attempted to characterize his comments in this regard as expressing gratitude that things like that no longer took place, as they had in years past. (Tr. 204.)

This threat on the part of Mr. Davidovich, an officer and agent of the Union, was designed to intimidate and threaten Mr. Samsel, expressly because he had been a “rat” – because he had engaged in the protected, concerted activity of reporting Mr. DeSpirito’s harassing conduct to Bemis management. Regardless of whether Mr. Samsel’s or Mr. Davidovich’s version of that conversation is credited, Mr. Davidovich admittedly made reference to acts of violence, which clearly had the effect – and almost certainly the purpose – of intimidating and coercing Mr. Samsel. This is a violation of Section 8(a)(1)(A). *See, e.g., Teamsters Local 391*, 357 NLRB 2330 (2012) (union agent’s statement that “the fucking scab needs to be stopped” was a sufficiently implied threat of violence so as to violate the Act).

C. The Union Attempted To Cause Bemis To Discriminate Against Mr. Stasko In Violation Of Section 8(b)(2).

Where a union engages in efforts to cause an employer to discipline, discharge or take other adverse action against an employee because that employee has engaged in protected activities, the union violates Section 8(b)(2) of the Act. *See Shipbuilders Local 9 (Todd Pacific Shipyards)*, 279 NLRB 617, 618 (1986) (union violated the Act by suggesting to the employer that it demote the employee, transfer him to another ship, and indicated that the union would not file grievances if the employer took action against the employee); *Development Consultants*, 300 NLRB 479, 483 (1990) (union’s encouraging employer to refrain from recalling an employee violated the Act). Even a failed effort to cause the employer to discipline or otherwise treat an employee adversely violates the Act, as Section 8(b)(2) establishes that it is unlawful for a union “to cause or *attempt to cause* an employer to discriminate against an employee...” 29 U.S.C. § 158(b)(2) (emphasis added.) The evidence presented at hearing established that the Union engaged in multiple unfair labor practices of this type.

Lynn Andrews testified that she has worked for Bemis for 42 years, and works in the bag department. (Tr. 94.) She has served as the Union's Secretary-Treasurer for approximately 12 years, and has been on the Union's Executive Board for over 20 years. (Tr. 95.) Ms. Andrews testified that the Union has a policy against employees turning in other employees for alleged misconduct, and confirmed that the Union frowns upon employees reporting other employees. (Tr. 97.) However, Ms. Andrews made an exception to this rule when it came to Mr. Stasko. As discussed below, almost immediately after Mr. DeSpirito was discharged as a result of the complaints of Mr. Stasko and others about Mr. DeSpirito's harassment of Mr. Stasko, Ms. Andrews launched an active campaign to try to get Bemis to discipline Mr. Stasko.

1. The Union Reported Mr. Stasko For A Purported Safety Violation In Mid-January 2018.

Mr. Stasko testified to an incident in mid-January 2018, in which the Safety Advocate, Denise Eisley, came to him and told him that Ms. Andrews had made a complaint about him to Ms. Eisley and to Bemis supervisors Mike Parker and Glenn Youngcourt, alleging that he was not wearing his hearing protection. (Tr. 77-78.) Mr. Stasko had seen Ms. Andrews watching him just a few minutes earlier, and she had made direct eye contact with him and then went into the press office. (Tr. 78-80.) Mr. Stasko acknowledged that he had briefly removed his hearing protection at that time to have a conversation with another employee, because he could not hear the conversation with the hearing protection on. (Tr. 78-79.) Employees frequently take off their hearing protection very briefly to have a conversation with another person. (Tr. 80.)

Ms. Andrews admitted that she went to the office to report Mr. Stasko for not wearing hearing protection to Company supervisors and the Safety Advocate, Denise Eisley. (Tr. 98.) She attempted to downplay this behavior by claiming that she "did not say his name." (Tr. 98.) Nonetheless, Ms. Andrews acknowledged that she was referring to Mr. Stasko, and that the

Company supervisors and Ms. Eisley understood that she was referring to Mr. Stasko, even if she did not use his name. (Tr. 98.)

Ms. Andrews further tried to justify her complaints by claiming that she only reported it because Mr. Stasko was a habitual offender of personal protective equipment (“PPE”) requirements. (Tr. 222.) However, on cross-examination, Ms. Andrews admitted that she had only seen Mr. Stasko with his ear protection off on that one occasion. (Tr. 222.) Further, she admitted that, on December 18, 2017, when she went to the press breakroom to threaten Mr. Stasko, she did not even know who Mr. Stasko was at that time. (Tr. 215, 222.) Despite only knowing who Mr. Stasko was for five weeks, and despite seeing him without proper PPE on only one occasion, she falsely claimed that she knew Mr. Stasko to be a “habitual offender” of PPE requirements. (Tr. 222.)

Ms. Andrews also stated that she complained to the Company about Mr. Stasko because certain people were getting away with things. (Tr. 221.) Ms. Andrews rationalized that it was not just Mr. Stasko, but a “group” of people who were getting away with things. (Tr. 221.) When pressed, Ms. Andrews admitted that this “group” included only those people who provided information to Bemis during its investigation of Mr. DeSpirito’s misconduct. (Tr. 221.)

Most tellingly, Ms. Andrews acknowledged that in her 42 years of employment with Bemis, she had never before – *not even once* – reported another employee’s safety violation to the Company. (Tr. 99.) While she had reported unsafe conditions, she had never reported misconduct by a coworker and fellow Union member. (Tr. 223.) The Company’s witnesses confirmed that Ms. Andrews’ reports were highly unusual. Ms. Pienkowski, the HR Manager, testified that, prior to Ms. Andrews’ complaints about Mr. Stasko, she was not aware of a single instance in which an employee reported another employee’s safety violation. (Tr. 43.) Further, Ms. Pienkowski had

never before received a complaint from a Union officer or agent reporting alleged misconduct by one of the Union's members. (Tr. 43.) Likewise, Mr. Passler, the Environmental Health and Safety ("EHS") Manager, testified that employees frequently complain about things like holes in the floor, missing guards, doors that do not work properly, water leaks and general safety condition complaints, but that employees typically report an employee by name. (Tr. 110-111.)

The evidence also demonstrated that Ms. Andrews was trying to get Mr. Stasko disciplined for something for which employees are not normally disciplined. Despite Ms. Andrews' efforts to get Bemis to discipline Mr. Stasko for this alleged PPE violation, Mr. Passler stated that he could not recall ever writing up an employee for not wearing PPE. (Tr. 114.) Mr. Passler noted that he has seen employees and supervisors having conversations and removing their hearing protection for brief periods while having conversations. (Tr. 116.) Mr. Passler stated that employees are never disciplined for removing hearing protection briefly while having a conversation. (Tr. 116.) Mr. Passler testified that the Company's safety concern with regard to hearing protection was to avoid long-term exposure to high decibels. (Tr. 155.) The Company is not particularly concerned about short-term exposure, such as an employee removing their hearing protection for a moment to have a conversation. (Tr. 155.) Mr. Passler testified that if he does observe an employee failing to wear PPE properly, he will talk to the employee and remind them to wear the PPE, but not write them up. (Tr. 114.) It is clear that Ms. Andrews was seeking to have Mr. Stasko treated more severely than all other employees, and that this was because Mr. Stasko had engaged in the protected activity of joining in his coworkers' complaints about Mr. DeSpirito's conduct.

Although this was Ms. Andrews' first time in 42 years reporting a coworker for an alleged safety violation, it was not her last time.

2. The Union Reported Mr. Stasko For A Purported Safety Infraction On January 25 and 26, 2018.

On January 25 and 26, 2018, Ms. Andrews made no less than three separate complaints about Mr. Stasko to Bemis management in an effort to get Bemis to take disciplinary action against him. These complaints related to an incident in which Mr. Stasko was alleged to have used a work knife to cut pizza.

During a safety committee meeting on January 25, 2018, the Company provided pizza to the committee. (Tr. 125.) During the meeting, another employee stated that Mr. Stasko was using a work knife to cut pizza. (Tr. 126.) An employee and fellow member of the safety committee, Michelle Hernandez, testified about the incident. (Tr. 205.) She stated that she observed Mr. Stasko remove a razor blade from his safety knife with his bare hands, use the blade to cut pizza, wipe the blade on a paper towel, and put it back into the safety knife. (Tr. 206-208.) She was concerned about this because Mr. Stasko should not have been handling a razor blade with his bare hands, and because the blade contacting the pizza could contaminate the Company's bread bags if the knife were later used in the Company's operations. (Tr. 206-208.) She believed that Mr. Passler was intentionally ignoring these violations. (Tr. 206-207.)

In contrast, Mr. Passler testified that he did not see Mr. Stasko use the knife in the way that Ms. Hernandez alleged, and stated that even if he had personally seen Mr. Stasko misusing a blade to cut pizza, he would not have issued disciplinary action. (Tr. 155-156.) He testified that he would have confronted Mr. Stasko and corrected the behavior, and reported it to the supervisor. (Tr. 156.) Ms. Pienkowski, Human Resources Manager, also testified that she was not aware of any employee ever being disciplined for that type of safety violation. (Tr. 42.) With regard to PPE, the Company typically does not engage in formal discipline for minor violations. (Tr. 55.) Typically, the Company will repeatedly coach an employee, and if there is a habitual offender, the

Company will use progressive discipline. (Tr. 55.) Mr. Passler did request that the Safety Advocate, Denise Eisley, discuss the issue with Mr. Stasko, which is consistent with his typical response to such incidents. (Tr. 156.)

Ms. Eisley confirmed that she was not aware of any employees receiving any formal discipline for minor safety violations such as PPE violations, within at least the past few years. (Tr. 212.) Ms. Eisley also confirmed that Mr. Passler had told her to go and talk to Mr. Stasko and ensure that there was not a contaminated blade in his knife. (Tr. 213.) Ms. Eisley did go to Mr. Stasko and confirm that his blade had been replaced. (Tr. 214.)

However, this was not good enough for the Union. Ms. Hernandez testified that she was very upset about the violation that she observed, and that she thought Mr. Stasko should have been discharged or disciplined for the offense. (Tr. 208.) Ms. Hernandez complained about this incident to the Union's Secretary-Treasurer Lynn Andrews because Mr. Stasko was "causing all these problems between other employees." (Tr. 209.) On cross-examination, Ms. Hernandez confessed that her concern that Mr. Stasko was "causing all these problems with other employees" was in reference to Mr. DeSpirito being disciplined and discharged. (Tr. 209.)

Ms. Andrews was all too eager to run with Ms. Hernandez's concern about Mr. Stasko. First, on January 25, 2018, Ms. Andrews left an angry voicemail message for Carl Passler, Bemis's EHS Manager. Mr. Passler testified to receiving the voice message. (Tr. 118,) A recording of the message was received into evidence as General Counsel Exhibit 5(b).

Hello, this is Lynn Andrews calling. I heard what happened at the safety meeting with a gentleman taking a razor blade out and cutting the pizza, putting it back in his knife to go cut film. And you said nothing, absolutely nothing. He used a razor blade between his fingers and didn't have any protection on, and you let that happen at a safety meeting? Unbelievable.

(Tr. 121.) The recording demonstrates that Ms. Andrews' message was animated and she was agitated and angry in leaving the message. Even though Ms. Andrews' message did not mention Mr. Stasko by name, Mr. Passler was aware that Ms. Andrews' message was referring to Joe Stasko because of the concerns raised by Ms. Hernandez during the safety meeting earlier that day. (Tr. 125.) Mr. Passler forwarded the voice message to Ms. Pienkowski that same day, and Ms. Pienkowski listened to Ms. Andrews' complaint. (Tr. 36.) Ms. Andrews acknowledged that she had called Safety Manager Carl Passler to complain about Mr. Stasko and the alleged pizza knife incident. (Tr. 102.)

Ms. Andrews was not done yet. Ms. Andrews also contacted the Company's Corporate Compliance Hotline to complain about Mr. Stasko's conduct in the "pizza knife" incident. (Tr. 37; G.C. Exh. 4.) Ms. Andrews confirmed that she had never before, in 42 years of employment, called the Corporate Hotline to report misconduct by a fellow employee and Union member. (Tr. 102-104.)

Even after complaining to Mr. Passler and to the Corporate Compliance Hotline on January 25, Ms. Andrews was not done yet. The next morning, January 26, 2018, Ms. Andrews called Ms. Pienkowski's cell phone to complain about Mr. Stasko. At the time, Ms. Pienkowski was in a morning leadership meeting. (Tr. 35.) Ms. Andrews asked Ms. Pienkowski what was happening with the Company's investigation of Joe Stasko cutting his pizza with a work knife. (Tr. 35.) Mr. Passler was in the leadership meeting with Ms. Pienkowski, so she pulled Mr. Passler out of the meeting with her and they went to Ms. Pienkowski's office to take Ms. Andrews' call, which they put on speakerphone. (Tr. 35.) In that conversation, Ms. Andrews claimed that the Company was giving Mr. Stasko preferential treatment, argued that the Company had disciplined other employees for less, and that she wanted to know what the Company was going to do about Mr.

Stasko. (Tr. 35.) Ms. Andrews was angry on the phone, and raised her voice and sounded excited. (Tr. 36.) Ms. Andrews demanded to know what the Company was going to do about disciplining Mr. Stasko. (Tr. 129.) As Ms. Pienkowski explained, Mr. Passler asked Ms. Andrews what she wanted him to do and what her expectations were for an outcome to the Company's investigation. (Tr. 36.) Ms. Andrews responded, "I can't talk about this right now," and she hung up on them. (Tr. 36.) Mr. Passler confirmed that Ms. Andrews was angry during the call, was speaking louder than her normal speaking voice and hung up on them when she didn't like their response. (Tr. 129-130.)

Ms. Andrews confirmed in her testimony that she was "very upset that nothing happened" to Mr. Stasko, that he was not disciplined by the Company. (Tr. 106.) This is a direct admission by Ms. Andrews that she was advocating for Bemis to discipline Mr. Stasko, an employee whose interests the Union is supposed to be representing. As noted above, in 42 years of employment at Bemis, Ms. Andrews had never before reported another employee's safety violation to the Company. (Tr. 99.) Yet, between the earlier PPE complaint and the "pizza knife" incident, she made at least four such reports against Mr. Stasko within a week of Mr. DeSpirito's discharge. Ms. Andrews directly admitted her intention and attempts to get Bemis to discipline Mr. Stasko in direct retaliation for Mr. Stasko's protected activity, and this violation was demonstrated by overwhelming evidence at hearing.

IV. CONCLUSION

The evidence presented at hearing convincingly established that the Union engaged in each and every one of the violations alleged in the Complaint. Mr. Stasko and Mr. Samsel engaged in protected, concerted activity that contributed to Bemis's decision to suspend and discharge the Union president for misconduct. Immediately following that suspension and discharge, Union

agents sprang into retaliatory action to intimidate and coerce the employees who engaged in that protected activity, including direct verbal threats, written and posted threats, and brazen attempts to cause Bemis to issue disciplinary action to those employees. For all the reasons noted and the record as a whole, the Administrative Law Judge should conclude that the Union engaged in all of the unfair labor practices alleged in the Complaint, and make an appropriate remedial order to correct this unlawful intimidation and coercion.

Dated at Milwaukee, Wisconsin, the 3RD day of December, 2018.

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.



By: _____

Timothy C. Kamin, Esq.
Ogletree, Deakins, Nash, Smoak
& Stewart, P.C.
Pabst Boiler House
1243 North 10th Street, Suite 200
Milwaukee, WI 53205-2559
Telephone: 414-239-6400
Facsimile: 414-755-8289
timothy.kamin@ogletree.com

**ATTORNEYS FOR CHARGING PARTY
BEMIS COMPANY, INC.**

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